OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 692

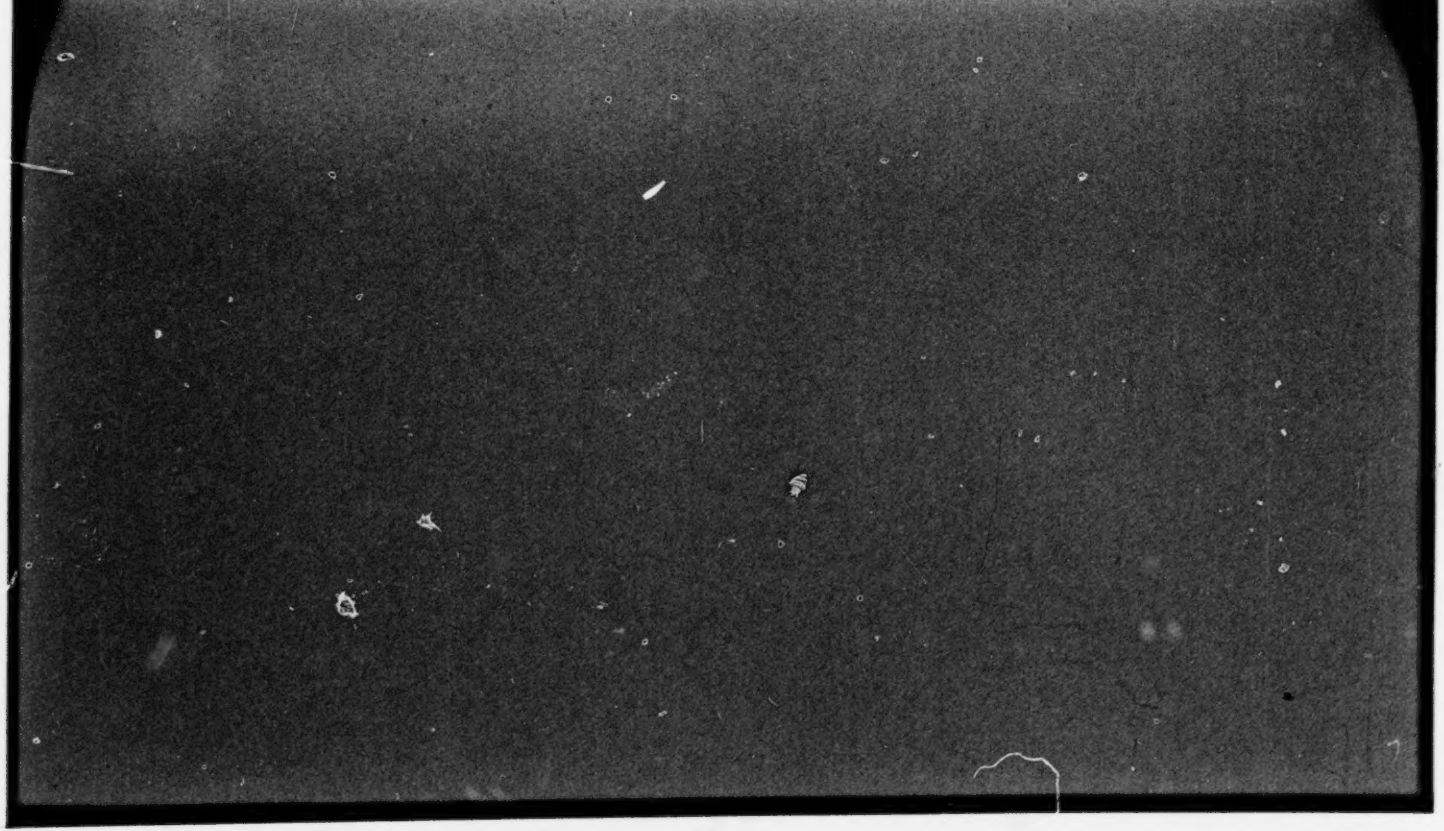
THE PURE OIL COMPANY, PETITIONER,

vs.

PASCUAL SUAREZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1965
CERTIORARI GRANTED JANUARY 17, 1966



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IN THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Defendant-Appellant,

versus

PASCUAL SUAREZ, Plaintiff-Appellee.

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—
Filed May 21, 1964

Appellant, The Pure Oil Company, designates for printing, as its record on appeal the record relevant to the appeal, consisting of:

1—The Complaint;

2—Appellant's motion to transfer venue to the United States District Court for the Northern District of Illinois;

3—The affidavit as to appellant's main office and state of incorporation;

4—The stipulation that The Pure Oil Company does business in the State of Florida and that interrogatories accordingly need not be answered;

5—The order of the District Court denying transfer of venue;

6—The motion for an order of the District Court al-
[fol. 2] lowing an appeal;

7—The order of the District Court certifying the appeal under 28 USC 1292 (b);

8—The order of the United States Court of Appeals for the Fifth Circuit allowing the appeal;

9—The notice of appeal and designation of record;

10—The Clerk's certificate.

Respectfully,

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans 70112; By: William S. Stone;

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida 33130;

Proctors for Defendant-Appellant.

William S. Stone, Joaquin Campoy, Advocates.

Certificate of Service (omitted in printing).

[fol. 3]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 64-32 Civ. EC

PASCUAL SUAREZ, Plaintiff,

—vs.—

PURE OIL COMPANY, a corporation, Defendant.

COMPLAINT UNDER JONES ACT AND DEMAND FOR JURY TRIAL
—Filed January 21, 1964

To the Honorable Judge of the Above Court:

Action by Seaman Without Prepayment of Costs Pursuant to Title 28 U.S.C.A., Section 1916

Comes Now the Plaintiff Pascual Suarez by his undersigned attorney and complains of the Defendant Pure Oil Company, a corporation, as follows:

For a First Cause of Action

I

That at all the times pertinent hereto the Plaintiff Pascual Suarez is a resident and citizen of the State of Florida.

II

That at all the times pertinent hereto the Plaintiff Pascual Suarez was employed in Florida by the Defendant Pure Oil Company, a corporation, in the capacity of seaman on board a certain vessel known as the S. S. "Pure Oil".

III

That at all the times pertinent hereto Pure Oil Company, [fol. 4] a corporation, owned, managed, operated and controlled the S. S. "Pure Oil"; and is a corporation doing business in the State of Florida.

IV

That on or about June 1, 1963, at sea, the Plaintiff suffered, severe, painful and permanent injury as the direct and proximate result of the negligence of the Defendant, its agents, officers, servants and employees on the vessel.

V

That by reason of the said negligent injury and the employer-employee relationship aforesaid, there is applicable hereto a certain Act of Congress known as the Jones Act, Title 46 U.S.C.A., Section 688.

VI

That on said date, at about 1415 hours, Plaintiff was sleeping in his quarters between shifts in the galley, having been awake since early in the morning to prepare breakfast and lunch for the crewmen; that he was awakened by the bo'sun who told him that the Captain had

ordered him to come topside; that Plaintiff went to the bridge and was then told that the Captain wanted him on the main deck; that Plaintiff descended the ladder on the port side to the main deck and suffered severe, painful and permanent injuries, by reason of the dangerous and unsafe condition of the ladder and the deck at the foot of the ladder, that the deck plates on the main deck were maintained so as to form an uneven and dangerous condition for persons descending from the ladder to the deck; and [fol. 5] that there was improvised thereon a plate near to but not abutting the regular deck plate, leaving a space between the regular deck plate and the improvised plate so that it forms a trap for persons descending the ladder; in addition thereto, the steps of the ladder were slippery and without grids by reason of the fact that an excess number of coats of paint have obscured the corrugated treads of the steps particularly the lower step of the ladder; that in descending the ladder and as the Plaintiff was about to step onto the deck his back foot slipped on the slippery step as he was distracted by an order from one of the officers and was caused to step into the space between the deck plate and the improvised plate of the main deck, thereby suffering the injuries aforesaid; that the aforesaid injuries were proximately caused by the negligence of the Defendant, its officers, agents, servants and employees in maintaining a dangerous and unseaworthiness condition as aforesaid and Defendant was otherwise negligent in the premises, all to Plaintiff's damage in the sum of $25,000.00.

For a Second Cause of Action

Plaintiff repeats and realleges all of the foregoing as if fully set forth at length, and in addition thereto alleges:

VII

That the Defendant had the absolute and non-delegable duty of providing the Plaintiff with a seaworthy vessel.

VIII

That the conditions aforesaid constituted a breach of [fol. 6] said duty in that the vessel was unseaworthy as the direct and proximate result of the Plaintiff's injuries and damages.

Wherefore the Plaintiff Pascual Suarez demands judgment of the Defendant Pure Oil Company, a corporation, on the First and Second Causes of Action, jointly and severally, in the sum of $25,000.00, plus costs.

Plaintiff demands trial by jury.

Arthur Roth, Esq., Attorney for Plaintiff, 1111 Ainsley Building, Miami, Florida 33132.

• • • • • • •

Note: Summons Omitted as Per Designation Copied Herein

In United States District Court

Motion to Transfer Venue—Filed February 14, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, reserving all rights, moves to transfer venue of the within proceeding under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division, and shows that

a—The Jones Act specifically provides: "Jurisdiction in such action shall be under the court of the district in which the defendant employer resides or in which [fol. 7] his principal office is located."

b—The Pure Oil Company is incorporated in the State of Ohio and its principal office is at Palatine, Cook County, Illinois, which is located in the Northern District of Illinois, Eastern Division, as will be shown

by affidavit to be filed in this Court and served on plaintiff prior to the hearing hereon.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130; By: James L. Hurley;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112; By: William S. Stone, Attorneys for Defendant.

Miami, February 14, 1964.

* * * * * * *

Note: Portion of Record Omitted as Per Designation Copied Herein

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IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF E. T. BERQUIST—Filed Feb. 19, 1964

State of Illinois
County of Cook

Before me, the undersigned notary public, personally ap- [fol. 8] peared E. T. Berquist, who, being duly sworn, deposed that he is Manager of the Insurance Department of The Pure Oil Company; that said company is incorporated in the State of Ohio; and that its principal office is at 200 East Golf Road, Palatine, Cook County, Illinois.

E. T. Berquist

Sworn to and subscribed before me this 14th day of February, 1964.

Theodore W. Anderson, Notary Public.

My Commission expires 11-22-65.

(Seal)

* * * * * * *

Note: Portion of Record Omitted as Per Designation Copied Herein

* * * * * * *

In United States District Court

Stipulation and Order Re Interrogatories—
Filed March 4, 1964

The parties, by their undersigned attorneys stipulate and agree that if the Defendant were to answer the interrogatories heretofore propounded by the Plaintiff, the answers would show:

I

That the Plaintiff was employed in Tampa, Florida, by the Defendant.

II

That the Defendant has transacted a substantial amount [fol. 9] of business in Florida and the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein, by the operation of its vessels in the ports of Florida and said District, and the sale of its products in Florida and said district.

III

It is further stipulated and agreed that the Defendant need not answer the said interrogatories, and that this stipulation may serve as the answers thereto; and that an order may entered thereon.

Stipulated and Agreed this 27th day of February, 1964.

Arthur Roth, Esq., Attorney for Plaintiff, 1111 Ainsley Building, Miami, Florida 33132.

Deutsch, Kerrigan & Stiles and Fowler, White, Gillen, Humkey & Trenam, Esqs., Attorneys for Defendant, 401 City National Bank Building, Miami, Florida 33132, By: James L. Hurley.

ORDER

It Is So Ordered

Done and Ordered at Miami, Dade County, Florida, this 2 day of March, 1964.

Emett C. Choate, United States District Judge.

[fol. 10]

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION OF DEFENDANT TO TRANSFER THIS CAUSE—March 4, 1964

This Cause coming on upon motion of the defendant to transfer this cause and the Court having examined the evidence and pleadings on file and having heard the argument of counsel and being otherwise advised in the premises, it is hereby

Ordered that the motion of the defendant is hereby denied on the grounds that the General Venue Statute 28 U.S.C. 1391 and the venue provisions of the Federal Employers' Liability Act (FELA), Title 45 U.S.C.A., Section 56 are applicable to and included in the Jones Act, Title 46 U.S. C.A., Section 688 as to permit this action to be brought in any district where the defendant is doing business.

Done and Ordered in Chambers, at Miami, Dade County, Florida, this 4 day of March, 1964.

Emett C. Choate, District Court Judge.

IN UNITED STATES DISTRICT COURT

MOTION FOR SUPPLEMENTAL ORDER ALLOWING APPEAL—Filed March 17, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, suggests to the Court that on March 4, 1964, the Court entered an order denying defendant's mo-

tion to transfer venue of the within proceedings under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division; and defendant shows that:

[fol. 11] Said motion and order involve a controlling question of law concerning venue of actions under the Jones Act, as to which there is substantial ground for difference of opinion; and that an immediate appeal from the said order may immediately advance the ultimate termination of this litigation by avoiding a possible second trial; and plaintiff's counsel has informed defendant's counsel that plaintiff is agreeable to certification of the matter for appeal;

And defendant accordingly moved the Court to supplement the order entered March 4, 1964, to allow an immediate appeal, pursuant to the provisions of 28 USC 1292 (b); and to stay further proceedings against defendant pending disposition of the appeal.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130, By: Wm. C. Norwood;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, By: William S. Stone, Attorneys for Defendant.

Miami
March 16th, 1964

* * * * * * *

Note: Memorandum on motion for Supplemental Order Certifying Appeal omitted as per designation copied herein.

* * * * * * *

[fol. 12]

IN UNITED STATES DISTRICT COURT

ORDER FOR LEAVE TO PROCEED WITH APPEAL—
March 16, 1964

On motion of defendant for an order of this Court, supplementing its order entered March 4, 1964, entered after hearing on defendant's motion for transfer of venue to the United States District Court for the Northern District of Illinois, which motion was argued on March 2, 1964; and the Court adhering to the ruling therein, and

The Court also being of opinion that the case is one for certification under 28 USC 1292 (b), as involving a controlling question of law as to which there is substantial ground for difference of opinion; and that an immediate appeal from the order may materially advance ultimate termination of the litigation, and

Defendant having timely and sufficiently objected to venue and having moved for transfer of venue, thus having preserved its rights, and having moved for certification of appeal with dispatch within ten days of being apprised of the aforesaid order denying transfer of venue herein, and a stay of proceedings being authorized under 28 USC 1292 (b), and

Plaintiff interposing no objection to certification of the aforesaid matters for appeal,

It Is Ordered that defendant be allowed to apply to the United States Court of Appeals within ten (10) days from the date of signature hereof, for leave to proceed with an appeal herein; and

[fol. 13] It Is Further Ordered that all proceedings be stayed in this Court pending disposition of defendant's appeal by the United States Court of Appeals for the Fifth Circuit.

Dated at Miami, Florida, March 16, 1964.

Emett C. Choate, United States District Judge.

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, Attorneys for Defendant.

In United States District Court

Order Granting Motion for Leave to Appeal—
Filed April 14, 1964

Before Rives and Jones, Circuit Judges and Bootle, District Judge.

By the Court:

It Is Ordered that leave to appeal from an interlocutory order of the District Court for the Southern District of Florida entered on March 4, 1964 in a case styled Pascual Suarez, plaintiff versus the Pure Oil Company, Defendant, No. 64-32-Civil, be, and the same is hereby Granted.

(Original Filed April 9, 1964)

A true copy

Test: Edward W. Wadsworth, Clerk, U. S. Court of Appeals, Fifth Circuit, By G. F. Ganucheau, Deputy, New Orleans, Louisiana.

* * * * * * *

[fol. 14] Note: Letter from G. F. Ganucheau to Mr. William S. Stone, omitted as per designation copied herein

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In United States District Court

Notice of Appeal and Designation of Record—
Filed April 14, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, reserving all rights, hereby gives notice

of its appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court denying defendant's motion to transfer venue of the within proceeding under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division; and designates, for transmittal to the United States Court of Appeals for the Fifth Circuit, the entire record.

Defendant shows that on April 9, 1964, the aforesaid United States Court of Appeals entered an order allowing this appeal.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130, By: James R. Hurley;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, By: William S. Stone, Attorneys for Defendant.

Miami
April 14, 1964

[fol. 15] I certify that the foregoing notice of appeal and designation of record were served on plaintiff by mailing the same to his attorney of record, Arthur Roth, Esq., 1111 Ainsley Building, Miami, Florida, 33132, on this 14 day of April, 1964.

James L. Hurley

* * * * * * *

Note: Cost Bond omitted as per designation copied herein

In United States District Court

Stipulation Re Parties—June 11, 1964

It Is Stipulated and Agreed by the parties that the Appellee, Pascual Suarez, is a resident and citizen of Hillsborough County, Florida, that such citizenship was made known to the Trial Judge, that Hillsborough County, Florida, is without the Southern District of Florida, and that the record may reflect such citizenship as a stipulated fact.

It Is Further Stipulated and Agreed that the Appellant, The Pure Oil Company, an Ohio corporation, is registered with the Secretary of State to do business in the State of Florida.

Dated this 11 day of June, 1964.

Arthur Roth, Esq., Attorney for Appellee, 1111 Ainsley Building, Miami, Florida 33132, Arthur Roth.

Deutsch, Kerrigan & Stiles, Esqs., 1700 Hibernia Bank Building, New Orleans, La. 70112;

Fowler, White, Gillen, Humkey & Trenan, Esqs., 401 City National Bank Building, Miami, Florida 33130, Attorneys for Appellant, By: James L. Hurley.

[fol. 16] Clerk's Certificate (omitted in printing).

[fol. 17]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Petitioner,

versus

PASCUAL SUAREZ, Respondent.

ORDER ON MOTION FOR LEAVE TO APPEAL UNDER 28 U.S.C. SECTION 1292(b).

Before RIVES and JONES, Circuit Judges and BOOTLE, District Judge.

By the Court:

It Is Ordered that leave to appeal from an interlocutory order of the District Court for the Southern District of Florida entered on March 4, 1964 in a case styled Pascual Suarez, Plaintiff versus the Pure Oil Company, Defendant, No. 64-32-Civil, be, and the same is hereby Granted.

[File endorsement omitted]

[fol. 18]

IN THE UNITED STATES COURT OF APPEALS

ARGUMENT AND SUBMISSION—January 13, 1965

[fol. 19]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

OPINION—June 16, 1965

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

Gewin, Circuit Judge: The appellee instituted this civil action in the District Court for the Southern District of Florida to recover damages for injuries he received while employed in the capacity of a seaman aboard the vessel S.S. "Pure Oil," owned and operated by The Pure Oil Company. His complaint proceeded on two theories: (1) negli- [fol. 20] gence under the Jones Act, 46 U.S.C.A. § 688, and (2) breach of the shipowner's duty to provide a seaworthy vessel. The company moved to transfer the case to the Northern District of Illinois on the ground that venue was

not properly laid in the Southern District of Florida.[1] The trial court denied the motion, but certified the question under 28 U.S.C.A. § 1292(b), and this interlocutory appeal ensued.

The relevant provision of the Jones Act, 46 U.S.C.A. § 688, provides as follows:

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer *resides or in which his principal office is located.*" (Emphasis supplied.)

The parties stipulated that The Pure Oil Company "has transacted a substantial amount of business in Florida and the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein. . . ." The company also filed an uncontradicted affidavit which states that it is incorporated in Ohio and maintains its principal office in Cook County, Illinois. The sole question for decision is whether the provision of the Jones Act quoted above enables an injured seaman to sue his employer corporation [fol. 21] wherever the employer does business or whether his choice of forums is limited to the districts in which the employer is incorporated and maintains its principal office.

Although the quoted provision of the Jones Act literally speaks of "jurisdiction," it was early held to refer only to proper venue. *Panama R.R.* v. *Johnson,* 265 U.S. 375, 68 L.Ed. 748 (1924). Hence, the privilege need not be given effect unless the defendant insists upon it. *E.g., Neirbo Co.* v. *Bethlehem Shipbuilding Corp.,* 308 U.S. 165, 84 L.Ed. 167 (1939); *Panama R.R.* v. *Johnson, supra;*

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[1] The special venue requirements of the Jones Act must be satisfied where a civil action is predicated on both unseaworthiness and Jones Act theories, even though the provisions of the general venue section would apply in a civil action based solely on unseaworthiness. See Branic v. Wheeling Steel Corp. (3 Cir. 1945) 152 F.2d 887.

Wright Federal Courts 128 (1963). It is established that, in the absence of a statutory directive to the contrary, the "residence" of a corporation for venue purposes is limited to the state of its incorporation. See *Suttle* v. *Reich Bros. Constr. Co.*, 333 U.S. 163, 92 L.Ed. 614 (1948); *Shaw* v. *Quincy Mining Co.*, 145 U.S. 444, 450, 36 L.Ed. 768, 771 (1892).

The appellee makes two arguments in support of the district court's denial of the motion to transfer, the first of which can be disposed of in short order. According to appellee, the Jones Act was passed in 1920 to expand and liberalize the relief afforded to seamen for injuries they sustained in their employment. Instead of devising separate standards to be applied in personal injury suits by seamen, Congress adopted the expedient of incorporating by reference the more detailed provisions which govern the liability of railroads to their employees.[2] Therefore, [fol. 22] appellee argues that the special venue provisions of the Federal Employers Liability Act, under which venue against Pure Oil would undoubtedly be proper in the instant case,[3] are applicable to a civil action under the Jones Act. However, this argument does not adequately accommodate the well-recognized and eminently logical canon of statutory construction that the specific provisions of a statute control exclusively over the broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature. See *Bulova Watch Co.* v. *United States*, 6 L.Ed.2d 72, 76, (1961); *Fourco Glass*

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[2] "[A]nd in such action *all* statutes of the United States *modifying or extending* the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ." 46 U.S.C.A. § 688 (Emphasis supplied.)

[3] The FELA contains much broader venue provisions than those of the Jones Act. Under that statute, venue is proper in the district where the defendant resides, where the cause of action arose, or where the defendant is "doing business" at the time of the commencement of the action. 45 U.S.C.A. § 56.

Co. v. *Transmirra Prods. Corp.*, 353 U.S. 222, 228-29, 1 L.Ed.2d 786, 790-91 (1957). As one court has stated, "The short answer to [appellee's] argument is that Congress has seen fit to impose different venue requirements in Jones Act cases. To now hold that the venue requirements under the Federal Employers' Liability Act are controlling would negate the plain language of 46 U.S.C. § 688." *Rodriquez* v. *United Fruit Co.*, 236 F. Supp. 680, 682 (E.D.Va. 1964). We are not persuaded to hold otherwise merely because the two other provisions of 45 U.S.C.A. § 56 have been held applicable in Jones Act cases.[4] Neither of the subjects covered [fol. 23] by those provisions is dealt with specifically in the Jones Act, and they would thus be fairly covered by the general reference to the FELA. See *Panama R.R.* v. *Johnson*, 264 U.S. 375, 392, 68 L.Ed. 748, 755 (1924).[5]

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[4] The same section of the FELA which contains its venue provision also contains a provision fixing the limitation period for filing suits and a provision reserving to the state courts concurrent jurisdiction over FELA claims. Both these provisions were applied to the Jones Act in Engel v. Davenport, 271 U.S. 33, 70 L.Ed. 813 (1926). See also Cox v. Roth, 348 U.S. 207, 99 L.Ed. 260 (1955); Panama R.R. v. Vasquez, 271 U.S. 557, 70 L.Ed. 1085 (1926).

[5] Appellee also relies upon the decision of this Circuit in Arthur v. Compagnie Generale Transatlantique (5 Cir. 1934) 74 F.2d 662 as a justification for construing the venue provisions of the Jones Act as nonexclusive. In that case we held that the Jones Act's venue requirements were inapplicable to a suit in a federal court against a defendant incorporated in a foreign country. We do not deem this case controlling in the instant situation. Where, for example, an American seaman sues an alien corporation under the Jones Act for an injury which occurred in the territorial waters of the United States, the *Arthur* result would certainly be compelled as a practical necessity; otherwise, the venue provision of the Jones Act would effectively preclude the seaman from invoking any federal forum if the employer chose to raise his venue objection. Such was surely not the intention of the drafters of the Jones Act. Indeed, the Jones Act venue requirements have also been held inapplicable in state courts. Bainbridge v. Merchants & Miners' Transp. Co., 287 U.S. 278, 77 L.Ed. 302 (1932). We do not think that the *Arthur* case should be read as suggesting that the venue provisions of the Jones Act do not furnish the exclusive venue requirements in any circumstances. Clearly they apply to a domestic corporation such as we have in the instant case.

Appellee makes a far more appealing argument, at least from the point of view of statutory construction, in its assertion that the definition of the term "residence" which was added to the general venue statute in 1948, 28 U.S.C.A. § 1391(c), should be read into the Jones Act venue requirements. Prior to 1948—and, indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the state of its incorporation, even in Jones Act suits. E.g., *Burris* v. *Matson Nav. Co.* (S.D.N.Y. 1940) 37 F. Supp. 648. In the course of the general revision of the Judicial Code in 1948, [fol. 24] Congress inserted subsection (c) into the general venue statute. That section provides as follows:

> "(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, *and such judicial district shall be regarded as the residence of such corporation for venue purposes.*" (Emphasis supplied.)

It is the last clause of that subsection which concerns us primarily, for if that phrase can be read as defining the residence of a defendant corporation for the purposes of the Jones Act's venue provisions, then the trial court properly denied Pure Oil's motion to transfer.

If section 1391(c) and the Jones Act venue provision are viewed together in light of the remedial purposes of the Jones Act, the most logical conclusion might well be that the general venue statute did expand the definition of residence in the Jones Act. In fact, all the courts which were faced with the question between 1948 and 1957 read the Jones Act in light of the new concept of corporate residence embodied in section 1391(c).[6]

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[6] See Hutchison v. Pacific-Atlantic S.S. Co. (9 Cir. 1954) 217 F.2d 384; Franklin v. Tomlinson Fleet Corp. (N.D. Ill. 1957) 158 F. Supp. 850; Phillips v. Pope & Talbot, Inc. (S.D.N.Y. 1952), 102

In 1957 however, the Supreme Court held that section 1391(c) did not define the residence of a corporate de- [fol. 25] fendant in patent infringement litigation. *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U.S. 222, 1 L.Ed. 2d 786 (1957). Since the decision in that case, most of the federal courts have concluded that its rationale foreclosed the application of section 1391(c) to Jones Act venue,[7] although a few have reached a contrary result.[8] The only other Circuit court which has confronted the issue in light of the *Fourco* case has read that decision as militating against the application of section 1391(c) to the Jones Act. *Leith* v. *Oil Transport Co.* (3 Cir. 1963) 321 F.2d 591. In addition, many courts have applied the *Fourco* rationale to other special venue statutes, holding that the provisions of the general venue section do not supplement those special statutes.[9]

F. Supp. 51; Mincy v. Detroit & Cleveland Nav. Co. (S.D.N.Y. 1950) 94 F. Supp. 456; Neset v. Christensen (E.D.N.Y. 1950) 92 F. Supp. 78; Bounds v. Streckfus Steamers, Inc. (D.Del. 1950) 89 F. Supp. 242; Bagner v. Blidberg Rothchild Co. (E.D.Pa. 1949) 84 F. Supp. 973.

[7] Leith v. Oil Transport Co. (3 Cir. 1963) 321 F.2d 591; Barnes v. E.J. Platte Fisheries (N.D.Miss. 1964) 237 F. Supp. 390; Rodriquez v. United Fruit Co. (E.D. Va. 1964) 236 F. Supp. 680; Blanco v. Gulf Coast Transp., Inc. (W.D. La. 1964) 235 F. Supp. 197.

[8] Connolly v. Farrell Lines, Inc. (1 Cir.) 268 F.2d 653, *cert. denied*, 361 U.S. 902 (1959); Garland v. Alaska S.S. Co. (D. Alaska 1961) 194 F. Supp. 792. These decisions are of dubious precedent value, however, since neither opinion discusses or cites the *Fourco* case.

[9] *E.g.*, Zonolite Co. v. United States (W.D. Pa. 1962) 209 F. Supp. 597 (venue in suits to set aside or enforce ICC orders); United Transit Co. v. United States (M.D. Tenn. 1957) 158 F. Supp. 856 (civil actions against the United States); R.J. Coulter Funeral Home, Inc. v. National Burial Ins. Co. (E.D. Tenn. 1960) 192 F. Supp. 522 (special venue provisions of the Clayton Act). Generally, the commentators seem to regard the *Fourco* result as necessary in all situations where special venue statutes come into play. See 1 Barron & Holtzoff, Federal Practice & Procedure § 80,

Hence, a casual glance at the rather formidable array of authorities would suggest that the court in *Leith* was cor-
[fol. 26] rect in its strict application of the *Fourco* result to suits under the Jones Act. Nevertheless, we must disagree with the Third Circuit's interpretation of the *Fourco* opinion.[10] While we certainly deem that opinion controlling, we think its rationale compels a result contrary to that reach in *Leith*.

The special venue statute to which the plaintiff in *Fourco* sought to apply section 1391(c) provided as follows:

> "Any civil action for patent infringement may be brought in the judicial district where the defendant *resides*, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C.A. § 1400(b). (Emphasis supplied.)

That section was re-enacted in 1948 along with the general revision of the Judicial Code which resulted in the expanded definition of corporate residence in section 1391(c). When section 1400(b) was re-enacted, the word "residence" was substituted for the word "inhabitant," but the court
[fol. 27] concluded from an examination of the legislative

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at 387 (1960); 1 Moore, Federal Practice ¶0.144. However, Professor Moore has criticized the *Fourco* opinion as unsound. See 1 Moore, Federal Practice ¶0.144[9], at 1632.

[10] We do not minimize the fact that *Leith* is diametrically opposed to the result reached in the instant case. However, it does seem appropriate to observe that the court in *Leith* was careful to point out in its statement of facts that the suit was filed in a Pennsylvania federal court, the plaintiff was a resident of Tennessee, the defendants were incorporated and maintained their principal places of business in Louisiana, they were not licensed to do business in Pennsylvania, and the accident occurred while the vessel was docked in the navigable waters of the Ohio River at Paducah, Kentucky. In the course of the opinion in *Leith*, the court made pointed reference to the facts mentioned: "It did not arise there; the plaintiff does not live there; the defendants are not incorporated there and do not maintain a place of business there." 321 F.2d at 594.

history of section 1400(b) that no substantive change was intended by the change in wording. Furthermore, as indicated by the Supreme Court's own review of the reasons for the passage of the predecessor to section 1400(b) in *Stonite Prods. Co.* v. *Melvin Lloyd Co.*, 315 U.S. 561, 86 L.Ed. 1026 (1942), the special venue section applicable to patent infringement actions was intended as a restrictive measure, designed to place greater limits on venue in patent infringement suits than those which had previously applied under the general venue provisions then in force. The Supreme Court thus concluded:

> "In light of the fact that the Revisers' Notes do not express any substantive change [in § 1400(b)], and of the fact that several of those having importantly to do with the revision say no change is to be presumed unless clearly expressed, and no substantive change being otherwise apparent, we hold that 28 U.S.C. § 1400(b) made no substantive change from 28 U.S.C. (1940 ed.) § 109 as it stood and was dealt with in the Stonite case."

353 U.S. at 227-28, 1 L.Ed.2d at 790.

We do not feel that the Supreme Court intended to foreclose the application of the expanded concept of a corporate defendant's residence to all special venue statutes. Our reading of *Fourco* convinces us that the court contemplates an analysis of the relationship of section 1391(c) to special venue statutes in light of the history and purpose of the [fol. 28] special provisions.[11] As indicated above, the Court in *Fourco* focused sharply on the congressional intent that Section 1400(b) have a restrictive effect. Applying this broad principle to the specific venue statute which applies to Jones Act suits, we hold that section 1391(c) furnishes

[11] Such an approach has also been suggested by commentators. See, *e.g.*, Note, Venue in Private Antitrust Suits, 37 N.Y.U. L.Rev. 268 (1962); Recent Decision, 62 Mich. L.Rev. 897 (1964) (criticizing the result in *Leith* v. *Oil Transport Co.*, *supra*).

the definition of corporate residence for that statute. When the Jones Act was passed in 1920, the general venue section restricted proper venue over a corporate defendant to the district of incorporation. Hence, the inference is clear that the special venue requirements of the Jones Act, in contradistinction to those relating to patent infringement suits, were expansive and afforded the seaman an additional federal forum in which to present his Jones Act claim—the district of the principal office of his employer. Citation of authority is unnecessary for the proposition that the Jones Act is remedial legislation which is to be construed liberally in favor of enlarging the remedies of the injured seaman. We think it is also significant that the consent doctrine established in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 84 L.Ed. 167 (1939), under which a corporate defendant is deemed to have acceded to venue in the federal courts of a state by appointing an agent and submitting to the jurisdiction of the state courts, was applied to Jones Act suits.[12] *Antonana* v. *Ore S.S. Corp.*, (S.D.N.Y. 1956) [fol. 29] 144 F. Supp. 486; *Bennett* v. *Standard Oil Co.* (D.Md. 1940) 33 F. Supp. 871; see 1 Moore's Federal Practice ¶0.142[5-3], at 1492. The courts, on the other hand, have consistently refused to apply *Neirbo* to defendants in patent infringement litigation. *E.g.*, *American Chemical Paint Co.* v. *Dow Chemical Co.* (6 Cir. 1947) 161 F.2d 956;

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[12] We note that the *Neirbo* doctrine could conceivably apply in the instant case, but the record is inadequately developed on the question. The parties stipulated that the defendant is "registered with the Secretary of State to do business in the State of Florida." Registration may refer to the statutory scheme embodied in Fla. Stat. Ann., §§ 47.34, 47.36, and 47.43, under which a foreign corporation must designate an office where process may be served or an agent on whom process may be served as a prerequisite to the maintenance of actions in the state courts. The *Neirbo* question was apparently not raised or considered in the district court. Furthermore, we cannot determine from the stipulations whether there has been such compliance with the Florida statutes concerning qualification to do business that *Neirbo* could be invoked. See Moss v. Atlantic Coast Line R.R. (2 Cir. 1945) 149 F.2d 701; Donahue v. M. A. Henry Co. (S.D.N.Y. 1948) 78 F. Supp. 91.

Bulldog Elec. Prods. Co. v. *Cole Elec. Prods. Co.* (2 Cir. 1943) 134 F.2d 545. In light of these considerations, we do not think the result reached in *Fourco* is appropriate in the instant case.

Indeed, if a broad reading is not accorded the Jones Act, its remedial purpose may be thwarted by working a great inconvenience on the injured seaman who wishes to present his Jones Act claims in the federal court. In some cases, requiring the seaman to bring his action far from his home might deter his pressing his claims at all because of the prohibitive cost of transporting witnesses and conducting the trial in a distant forum. No greater burden is imposed on the employer than would exist in any other civil action which he might be called upon to defend. Furthermore, if the employer were sued in a forum inconvenient to him, he could invoke the transfer provisions of 28 U.S.C.A. § 1404(a). A restrictive reading of the Jones [fol. 30] Act venue provisions, on the other hand, would severely circumscribe the seaman plaintiff's remedies unless, of course, he institutes suit in a state court, where the Jones Act venue requirements would be inapplicable. See *Bainbridge* v. *Merchants & Miners' Transp. Co.*, 287 U.S. 278, 77 L.Ed. 302 (1932). An injured seaman has the alternative of filing a suit in admiralty in which he seeks relief under the substantive provisions of the Jones Act. In such a situation the venue provisions of the Jones Act would probably not restrict his choice of forums, see, *e.g.*, *Brown* v. *C. D. Mallory & Co.* (3 Cir. 1941) 122 F.2d 98; 2 Norris, The Law of Seamen § 675, but the plaintiff would have to forego his right to trial by jury.

We think the Jones Act's venue provision was meant to provide a convenient federal forum for the satisfaction of the seaman's personal injury claims against his employer. It is consonant with these purposes to give the term "residence" as used in the Jones Act an expansive interpretation, and we do not think such a reading of the Jones Act does violence to the rationale of *Fourco Glass Co.* v. *Trans-*

mirra Prods. Corp.[13] Both the *Fourco* opinion and the patent infringement statute adhere to the fundamental principle that an action may be brought against a corporation not only where the corporation resides, but also where [fol. 31] the offending corporation has committed acts of infringement (the wrong) and has a regular and established place of business. In the very beginning of the *Fourco* opinion the Supreme Court pointedly observes that the trial court concluded that "there had been no showing of any acts of infringement in the district of suit . . ." In addition to the stipulated facts mentioned above, the complaint in the instant case alleges that the plaintiff is a resident citizen of Florida, that he was employed in Florida by the defendant in the capacity of seaman, that the defendant is a corporation doing business in the State of Florida, and that the alleged injury arose out of the employer-employee relationship. It is further stipulated that the vessels of the defendant operate in the ports of Florida and in the Southern District, that it sells its products in Florida in that district, and that the defendant "is registered with the Secretary of State to do business in the State of Florida."

There is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district in question, transact a substantial amount of business there both before and after the event about which the plaintiff complains and at the time the suit is filed with the expressed intention to continue doing business in such locale, but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office is located. To do so would authorize it "to run with the hare and hold with the hound."

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[13] Our construction of the special venue provisions of the Jones Act does not render totally meaningless the second predicate for venue in that section. It would still operate to provide an additional forum in which an injured seaman could sue an individual employer; venue as to such an employer would be proper in the district in which his principal office is located as well as the district in which he maintains his residence.

In the doing of substantial business in an area a corporation becomes a part of the mainstream to commerce which [fol. 32] affects the welfare of many people including those it may negligently injure. It receives the benefits which normally come to those engaged in business in the area. The right to choose to do substantial business in a particular locality does not have to be exercised. However, once the choice is made it would be unjust to permit the offending corporation to continue its operations, in the course of which it also may be creating liabilities, and at the same time to grant it complete immunity from those liabilities by shielding it with a carapace of technical venue construction. Usually the witnesses, the evidence, and all the facts leading to the ultimate inquiry as to the truth could be presented more effectively and with less inconvenience than would be possible at the residence or principal place of business of the corporation, often a substantial distance from the place of the wrong. Such a principle cuts two ways and may serve both plaintiff and defendant alike.

We note in reaching this result we must assume that the purpose of the second clause of section 1391(c) was to define the residence of a corporate defendant for purposes other than those delineated in section 1391(a) and (b). Such an assumption appears to comport with the wording of the section. Of course, there is no problem of statutory construction present in the instant case which is comparable to that treated in *Robert E. Lee & Co.* v. *Veatch* (4 Cir. 1961) 301 F.2d 434, where the question of the applicability of the definition to a corporate plaintiff arose. Indeed, the difficulty of applying section 1391(c) to a corporation suing as plaintiff may be, in part at least, accountable for the refusal of courts to apply that section [fol. 33] to certain other special venue statutes, such as 28 U.S.C.A. § 1398, which relates to review of ICC orders, and 28 U.S.C.A. § 1402, which governs venue in civil actions against the United States.

For the foregoing reasons, we think the district court's denial of the motion to transfer was correct. As we read the Jones Act, it now provides that venue with respect to

a corporate employer defendant is proper in any district in which it is "incorporated or licensed to do business or is doing business." The denial of the motion to transfer is Affirmed, and the case is Remanded to the district court for further proceedings.

[fol. 35]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21446

D. C. Docket No. C. A. 64-32-Civ-EC

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

JUDGMENT—June 16, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the denial of the motion to transfer in this cause be, and the same is hereby affirmed, and that this cause be and it is hereby remanded to the District Court for further proceedings in accordance with the opinion of this Court.

It is further ordered and adjudged that the appellant, The Pure Oil Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 16, 1965.

Issued as Mandate:

[fol. 36] [File endorsement omitted]

[fol. 38]

IN THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 21,446

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Honorable Emett C. Choate, District Judge.

MOTION FOR REHEARING—Filed July 2, 1965

Appellant, The Pure Oil Company, moves for rehearing *en banc*, or in the alternative for rehearing, showing that

a—The issue involves venue under the Jones Act, a matter of great importance in which nationwide conformity is essential to the requisite uniformity and harmony of admiralty and maritime law;

b—This Court's opinion admittedly is in conflict with the holding of the United States Court of Appeals for the Third Circuit on the same question, and intercircuit conflict should be avoided;

[fol. 39] c—This Court has no power to deprive appellant of its venue privilege allowed by *Panama Railroad Co.* vs. *Johnson*, 265 US 375;

d—The direct result of this Court's holding is to create a special venue (wherever the employer does business) which only Congress can create, but which Congress rejected after several Senate-House conferences, prior to passing the Jones Act;

e—This Court's holding that the venue provisions of the Jones Act must be given an "expansive interpretation" is at odds with the expressed intent of Congress;

f—This Court's decision disagrees with every decision which has applied the rule of *Fourco Glass Co.* vs. *Transmirra Products Corp.*, 353 US 222, to special venue statutes, and is directly contrary to the holding in *Fourco* that "no changes of law or policy are to be presumed from changes of language in the (1948) revision unless an intent to make such changes is clearly expressed". 352 US at 227.

Respectfully,

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana 70112;

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida 33130, Attorneys for Appellant.

William S. Stone, Joaquin Campoy, Advocates.

[fol. 46]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 7, 1965

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

PER CURIAM:

It Is Ordered that the petition for rehearing in the above entitled and numbered cause be and the same is hereby Denied.

[File endorsement omitted]

[fol. 47] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 48]

SUPREME COURT OF THE UNITED STATES

No. 692, October Term, 1965

THE PURE OIL COMPANY, Petitioner,

v.

PASCUAL SUAREZ.

ORDER ALLOWING CERTIORARI—January 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.